

## AGENDA ITEM



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Public Hearing to consider an appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A

**MEETING DATE:** November 16, 2005

**PREPARED BY:** Associate Planner, Mark Meissner

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**RECOMMENDED ACTION:** That the City Council obtain sufficient information and testimony to determine whether or not the project would achieve and maintain a high quality development and that the public's welfare would be served. Absent such information and testimony the City Council is recommended to uphold the Planning Commission's denial of the request of Kirk Smith on behalf of Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on-sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A, as found and determined by the Planning Commission in Resolution P.C. 05-29.

**BACKGROUND INFORMATION:** The request was first introduced to the Planning Commission at their public hearing of August 10, 2005. The request was continued due to a letter from a concerned neighbor alleging that there has been a history of noise and poor management at the Velvet Grill, and the applicant was not present to answer the Commission's questions. The Planning Commission directed Staff to obtain a history of Incident Reports from the Police Department to determine the extent of the problem, and to notify the applicant that a representative must be present to answer the Commission's questions.

The request was brought back to the Planning Commission at their public hearing of September 14, 2005 where staff reported that the records obtained from the Police Department did not represent a serious problem at the Velvet Grill and recommended approval of the request. The Assistant Manager of the Velvet Grill was present at the hearing to answer questions; however, the Planning Commission felt that he was not prepared to answer questions but to simply make statements. The Planning Commission found that their concerns were not addressed, nor important to the applicant, and for these reasons they could not approve the request.

**FUNDING:** None

  
Randy Hatch  
Community Development Director

MM/RH/kc

Attachments: Letters, Planning Commission Staff Reports,  
Resolution & Minutes of 8/10 & 9/14 Public Hearings.

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**APPROVED:**   
Blair King, City Manager



## **MEMORANDUM, City of Lodi, Community Development Department**

**To:** Planning Commission

**From:** Community Development Department

**Date:** August 10, 2005

**Subject:** The request of Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with Eating Establishment at 1421 S. Ham Lane, Suite A.

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### RECOMMENDATION

Staff recommends that the Planning Commission approve the request of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage Control (ABC) License for On Sale Beer and Wine with Eating Establishment at a restaurant at 1421 S. Ham Lane, Suite A, subject to conditions on the attached resolution.

### SUMMARY

The proposed project is a new Alcohol Beverage Control Type 41 license for the Velvet Grill and Creamery Restaurant that is currently located on the west side of Ham Lane, south of Kettleman Lane. The property is zoned PD-15, Planned Development District 15. The PD-15 agreement established that the property is subject to the performance standards as described in the City's C-S, Commercial Shopping District. The Type 41 license authorizes the sale of beer and wine for consumption on the licensed premises in conjunction with a boni-fide eating establishment. The Velvet Grill and Creamery will sell beer and wine during the same hours as the restaurant is open.

### ANALYSIS

The Velvet Grill and Creamery has a full lunch and diner menu including sandwiches, pasta, traditional dinners, and deserts and would like to sell beer and wine in conjunction with their food sales. The restaurant is open from 8:00 am to 10:00 pm, seven days a week. The total square footage of the restaurant is 2,200 square feet and the restaurant has approximately 20 employees working various shifts. Beer and wine will only be served during hours the restaurant is serving food.

The Lodi Municipal Code requires a Use Permit for the sale of alcohol. The provision covering alcohol sales is found in Section 17.72.040 of the Zoning Code and applies to off-sale as well as on-sale alcohol outlets. Census Tract 43.06 covers the area south of West Kettleman Lane, west of the railroad tracks, north of West Harney, and east of Zinfandel Drive and Beckman Park. Because this area has a large concentration of neighborhood and community commercial uses,

there are eight existing ABC licenses in the census tract for on-site sale at other eating establishments. The ABC currently allows eight ABC licenses for on-sale and seven licenses for off-sale within the Census tract. The nearest licensed on-sale restaurants are Shi Ra Soni 2, Yen Ching, and Casa Mexicana. Within this census tract, there are three stores with off-sale licenses, as listed below:

On-sale	Business	ABC License Type
1110 W Kettleman	Yen Ching	On-sale Beer and Wine for a Bona-fide Public Eating Place
1110 W Kettleman	Casa Mexicana	On-sale Beer and Wine for a Bona-fide Public Eating Place
1413 S Church	Mar Y Tierra Restaurant	On-sale Beer and Wine for a Bona-fide Public Eating Place
2525 S Hutchins	Tokay Pizzeria	On-sale Beer and Wine for a Bona-fide Public Eating Place
1900 Hutchins	Lodi Athletic Club	On Sale Beer
1420 W Kettleman	Shi RA Soni 2	On-sale Beer and Wine for a Bona-fide Public Eating Place
226 W Kettleman	Happy Burro Mexican Rest.	On-sale Beer and Wine for a Bona-fide Public Eating Place
1040 W Kettleman	Cheezer Gourmet Pizza	On-sale Beer and Wine for a Bona-fide Public Eating Place

Off-sale	Business	ABC License Type
1000 W Kettleman	Longs Drugs	Off-Sale General
2525 S Hutchins	Tokay Market Food & Liquor	Off-Sale General
401 W Kettleman	USA Mini Mart	Off-Sale Beer and Wine

Because the Velvet Grill and Creamery is a restaurant that would like to sell beer and wine with food, as opposed to a bar that serves food, we do not anticipate that the alcohol sales portion of the business will create any problems. This operation would be similar to other restaurants (Shi Ra Soni 2, Yen Ching and Casa Mexicana) with on-sale ABC licenses and there has not been any particular problem with these establishments.

Since the Census Tract 43.06 incorporates eight other restaurants with on-sale licenses, out of an allowable eight on-sale license for this Census tract, approval of this Use Permit would require a determination that public convenience or necessity would be served by the issuance of this permit.

Respectfully Submitted,



Jason Burke  
Planner

Reviewed & Concur,



Jerry Herzick  
Building Official

JH/jb

Attachments

# CITY OF LODI

## PLANNING COMMISSION

### Staff Report

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**MEETING DATE:** August 10, 2005

**APPLICATION NO:** Use Permit U-05-11

**REQUEST:** The request of Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with Eating Establishment at 1421 S. Ham Lane, Suite A.

**LOCATION:** 1421 S. Ham Lane, Suite A, Lodi.  
APN 060-020-04

**APPLICANT:** Velvet Restaurant Inc.  
25 Sierra Vista  
Santa Barbara, CA

**PROPERTY OWNER:** Chris Gianulias  
3220 Province Towne Ct.  
Modesto, CA 95355

#### **Project Description:**

The Velvet Grill and Creamery Restaurant has a full breakfast, lunch and diner menu including sandwiches, pasta, traditional dinners, and deserts and would like to sell beer and wine in conjunction with their food sales. The restaurant is open from 8:00 am to 10:00 pm, seven days a week. The total square footage of the restaurant is 2,200 square feet and the restaurant has approximately 20 employees working various shifts. Beer and wine will only be served during hours the restaurant is serving food. Velvet Restaurant, Inc. must secure a Use Permit that will allow them to obtain a Type 41 On Sale Beer and Wine with Eating Establishment license from the Alcohol Beverage Control Dept.

**General Plan Designation** NCC, Neighborhood Community Commercial  
**Zoning Designation.** C-S, Commercial Shopping Center  
**Property Size.** 24,293 square feet, restaurant is 2,200 square feet.

#### **Adjacent Zoning and Land Use:**

**North:** P-D, Planned Development. Use is commercial shopping center and Kettleman Lane.

**South:** P-D, Planned Development. Single Family Residential neighborhood.

**East:** P-D. Use is commercial shopping center. To the east across Ham Lane is the Beckman Ranch Shopping Center.

**West:** P-D. Uses include Single Family Residential neighborhoods and commercial shopping center.

#### **Neighborhood Characteristics:**

The restaurant site is in a small shopping center, located at the southwest corner of West Kettleman Lane and South Ham Lane. Single-family residential neighborhoods are located to the south of the restaurant. Commercial uses are located to the north, east and west. Kettleman Lane, which is located north of the project property, is a major thorough fare that has a mixture of

commercial and office types of uses along this stretch of roadway. The other three corners of this intersection have some type of commercial or institutional use. The subdivisions to the south are separated from the shopping center by a block wall. This wall also runs the length of Ham lane south of the subject site. Within the shopping center, the Velvet Grill shares the building with two small retail businesses. There is also a freestanding auto parts store directly to the north of the restaurant.

#### **ENVIRONMENTAL ASSESSMENTS:**

The project was found to be Categorically exempt according to the California Environmental Quality Act, Article 19 §1532, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing ...the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant impacts are anticipated and no mitigation measures have been required.

#### **PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on July 30, 2005. Twenty-six public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property.

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission approve the request of Velvet Restaurant, Inc. for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with eating establishment at 1421 South Ham Lane, subject to the conditions on the attached resolution.

#### **ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the Use Permit with Alternate Conditions
- Deny the Use Permit
- Continue the Request

#### **ATTACHMENTS:**

1. Vicinity Map
2. Sample Menu
3. Draft Resolution

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, AUGUST 10, 2005**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of August 10, 2005, was called to order by Chair Aguirre at 7:00 p.m.

Present: Planning Commissioners –Haugan, Heinitz, Kuehne, Moran, White, and Chair Aguirre

Absent: Planning Commissioners – Cummins

Also Present: Community Development Co-Manager Joseph Wood, Senior Planner David Morimoto, Deputy City Attorney Janice Magdich, and Administrative Secretary Kari Chadwick

2. MINUTES

- a) "February 9, 2005", "February 23, 2005", & "July 13, 2005"

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Haugan, Moran second, approved the minutes of February 9, 2005, February 23, 2005, and July 13, 2005 as written.

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Aguirre called for the public hearing to consider the request of Kirk Smith on behalf of the Velvet Grill Restaurant for a Use Permit to allow a Type 41 Alcohol Beverage License for on sale beer and wine with eating establishment at 1421 South Ham Lane, Lodi.

David Morimoto, Senior Planner, reported that the Velvet Grill Restaurant is located near the southwest corner of Ham Lane and Kettleman Lane. The Restaurant recently changed ownership. The new owner would like to sell beer and wine with the regular menu. The Alcohol Beverage Control Board Census Tract for this area which extends from the Woodbridge Irrigation Canal on the west, Kettleman Lane on the North, the Railroad Tracks on the East, and Harney Lane on the South allows only eight on site liquor sells licenses in this area and there are currently eight on file. There are two establishments directly surrounding this location that have a license to sell alcohol and both are restaurants. Staff is recommending approval of this application. Today staff received a letter from a property owner whose home is adjacent to the property where the restaurant is located. The main objection is about the noise from the employees after hours.

In response to Commissioner Heinitz, Mr. Morimoto stated that there are eight on sell beer & wine licenses in the census area.

Hearing Opened to the Public

- None

In response to Commissioner Heinitz, Mr. Morimoto stated that we did not hear anything back from the Police Department when the Transmittal went out. The letter arrived today so there wasn't enough time to get a response to it either.

In response to Chair Aguirre, Mr. Morimoto stated that they would be allowed to serve for the hours that they are open for business.

Public Portion of Hearing Closed

Commissioner Haugan and Commissioner Heinitz requested the postponement of the Public Hearing until there could be some response from the Police Department and notification to the owner.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Haugan, Heinitz second, to continue the public hearing for the request of Kirk Smith on behalf of the Velvet Grill Restaurant for a Use Permit to allow a Type 41 Alcohol Beverage License for on sale beer and wine with eating establishment at 1421 South Ham Lane, Lodi. The motion carried by the following vote:

Ayes: Commissioners – Haugan, Heinitz, Kuehne, Moran, White, and Chair Aguirre

Noes: Commissioners –

Absent: Commissioners – Cummins

COMMENT / QUESTION FROM COMMISSIONER MORAN

In response to Commissioner Moran, Commissioner Heinitz stated that the Type 41 ABC License Census has been looked at in other areas like Downtown when trying to establish a restaurant corridor and on Cherokee Lane where there are a large concentration of restaurants.

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Aguirre called for the public hearing to consider the request of Jonathan Wetmore on behalf of Grands Amis Winery for a Use Permit to allow an Alcohol Beverage Control License Type 17 Beer and Wine Wholesaler and a Type 20 Off Sale Beer and Wine at 115 North School Street, Lodi.

Mr. Morimoto reported that the Grands Amis Winery came before the Planning Commission through a different location. They got a Use Permit to move their operation from the county to within the City limits out on East Turner Road. They currently have a business office on School Street just north of the Theater and would like to now move the entire operation to that location. Grands Amis Winery is going to concentrate on doing sells over the phone and internet, they would be storing some cases of wine, they would also be able to sell both wholesale and retail out of this location and would eventually like to open up for occasional wine tasting. They are asking for two different types of ABC licenses, one which allows for the selling of the wine over the phone and internet and the other which allows for the sell of wine on the retail end and the occasional wine tasting. They are keeping the office in suite 5 and take over an adjoining suite for the storage and wine tasting. There are a large number of liquor licenses already in this census area. The ABC Board allows four of the Type 20 Licenses and there are twenty-six currently. There are no wholesale licenses in this area right now.

In response to Commissioner Heinitz, Mr. Morimoto stated that it would take two separate votes, one for each of the different types of licenses. Grands Amis could maintain a license at both locations if he chose to do so.

Hearing Opened to the Public

- Jonathan Wetmore, Grands Amis Winery, stated that they have withdrawn their ABC License application for the Turner Road location. They have decided to have someone else make the wine and hold it in bond for them. The School Street location has plenty of room with 400 square feet of office space and 400 square feet of storage/conference/wine tasting space that is ready to go. The office has it's own parking area, so parking shouldn't be an issue. There will be no need for large trucks to deliver or pickup because of the smaller scale of the business. The wine has to be kept in bond until they pull it out. Their current hours are 8:00 a.m. – 5:00 p.m.



## **MEMORANDUM, City of Lodi, Community Development Department**

**To:** Planning Commission  
**From:** Community Development Department  
**Date:** September 14, 2005  
**Subject:** The request of Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with Eating Establishment at 1421 S. Ham Lane, Suite A.

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### RECOMMENDATION

Staff recommends that the Planning Commission approve the request of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage Control (ABC) License for On Sale Beer and Wine with Eating Establishment at a restaurant at 1421 S. Ham Lane, Suite A, subject to conditions on the attached resolution.

### SUMMARY

Review of Lodi Police Department event reports for calls for service at the Velvet Grill and Creamery Restaurant has determined that there have been relatively minor incidents related to noise from the restaurant staff. The planning department does not feel that the Velvet Grill and Creamery Restaurant has been a problem in the past and that a liquor license will create a serious problem.

### ANALYSIS

In response to a letter from a neighbor, Jon Miller, in opposition to the granting of a Use Permit for an ABC license, and a subsequent request by the Planning Commission, the Planning Department has requested reports for all calls for service from the police department to the Velvet Grill and Creamery Restaurant from 2000 to 2005. The Police Department provided reports for all calls for service at the restaurant location, including records of all noise complaints at the restaurant (summarized in the table below).

The majority of service calls at the restaurant involved incidents in the parking lot not associated with the restaurant, including traffic stops, suspicious behavior and harassment complaints. The majority of service calls associated with the restaurant involved leaving the doors open, fraud, and three incidents of loud noise late at night. There was one reported incident of employees skateboarding, one reported incident of partying in the back of the parking lot, and one case of loud pressure washing of the parking lot at 2:00 am. The Police Department records of calls for service at the restaurant from 2000 through 2005 do not reflect an ongoing problem with noise at the restaurant. None of the police records contained references to employees drinking. While the planning



## Police calls for service summary (2000-2005)

### Related to Restaurant

Date	Time	
02/06/2005	6:00 PM	Businesses front door left open, secured by employee
09/06/2004	12:00 PM	Open door to business, by owner for re-decorating
06/02/2004	2:30 AM	Disturbance: Loud noise from pressure washing of parking lot
05/17/2004	4:00 PM	Disoriented lost elderly female
05/13/2004	4:00 PM	Eat, no pay
10/28/2003	9:00 PM	Disturbance: partying in back lot (unclear if subjects were employees)
06/24/2003	4:30 AM	Suspicious vehicle in alley (delivery truck at business)
05/30/2003	1:00 PM	Check forgery
08/29/2002	4:00 PM	Lost money
07/17/2002	10:30 AM	Documents fraud
06/22/2002	11:30 PM	Loud employees skateboarding after work
04/03/2002	1:30 AM	Building check, employees inside
05/19/2001	9:30 AM	Found property
05/09/2001	2:00 PM	Stolen Wallet
01/21/2001	7:00 AM	Commercial burglary
09/17/2000	12:35 PM	Back door open
09/16/2000	9:30 AM	Commercial burglary
07/22/2000	12:30 PM	Disoriented lost elderly female
07/18/2002	9:00 AM	Suspicious incident: burnt matches inside front door

### Not directly related to Restaurant

Date	Time	
05/27/2005	12:00 PM	Fight in parking lot
07/27/2005	10:45 PM	Bald man with tattoos circling area
02/10/2005	11:00 PM	Walking stop
11/19/2004	12:00 PM	Harassment by male trying to read palms for \$150
10/31/2004	4:00 PM	Juveniles skating and breaking bottles (not identified as employees)
08/24/2004	8:00 AM	Harassment by sister's ex-boyfriend
07/13/2004	1:00 AM	Suspicious vehicle traffic stop
07/02/2004	11:00 PM	2 vehicle accident
05/13/2004	7:00 PM	Traffic stop, DUI
03/10/2004	10:30 AM	Vehicle stop
03/05/2004	2:30 PM	Harassment
02/16/2005	6:00 PM	Walking stop
01/13/2004	12:30 PM	Vehicle accident
12/25/2005	10:30 AM	Suspicious vehicle: owners rearranging for sale
12/12/2003	8:00 AM	Abandoned vehicle
11/26/2003	2:30 PM	Disturbance, 4 juvenile males in a fight in parking lot

11/21/2003	10:30 PM	Suspicious males going through mailboxes
08/09/2003	9:30 AM	Unoccupied vehicle facing wrong direction
06/12/2003	1:30 AM	Vehicle stop
06/01/2003	9:30 AM	Truck loitering in lot, possibly occupied
03/18/2003	7:00 PM	Suspicious vehicle in back parking lot
12/20/2002	6:00 PM	Missing juvenile
08/13/2002	8:00 AM	Harassment
04/19/2002	7:30 PM	Vehicle stop
04/03/2002	6:00 PM	Suspicious vehicle in parking lot
01/01/2002	1:00 PM	Vehicle accident
04/07/2001	7:00 PM	Stolen vehicle
04/11/2000	9:00 PM	Suspicious juvenile carrying box

department realizes that the neighbors around the restaurant may have been disturbed by events not recorded in the police records, there is not a long history in the police records that reflect an ongoing problem with noise and disturbance associated with the restaurant.

The restaurant will not function as a bar and will be required to continue operation as a restaurant, in compliance with ABC license requirements for a Type 41 license. Because the Velvet Grill and Creamery is a restaurant that would like to sell beer and wine with food, as opposed to a bar that serves food, we do not anticipate that the alcohol sales portion of the business will create any problems.

Conditions of approval are intended to insure that applicant shall operate and abide by all conditions of the State of California Department of Alcoholic Beverage Control license Type 41 regarding the consumption of alcohol and that the applicant will insure that the granting of this Use Permit for an ABC liquor license will not cause or result in repeated activities which disturb surrounding neighbors.

Respectfully Submitted,



Jason Burke  
Planner

Reviewed & Concur,

Jerry Herzick  
Building Official

JH/jb

Attachments

**CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** September 14, 2005

**APPLICATION NO:** Use Permit U-05-11

**REQUEST:** The request of Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with Eating Establishment at 1421 S. Ham Lane, Suite A.

**LOCATION:** 1421 S. Ham Lane, Suite A, Lodi.  
APN 060-020-04

**APPLICANT:** Velvet Restaurant Inc.  
25 Sierra Vista  
Santa Barbara, CA

**PROPERTY OWNER:** Chris Gianulias  
3220 Province Towne Ct.  
Modesto, CA 95355

**Project Description:**

The Velvet Grill and Creamery Restaurant has a full breakfast, lunch and diner menu including sandwiches, pasta, traditional dinners, and deserts and would like to sell beer and wine in conjunction with their food sales. The restaurant is open from 8:00 am to 10:00 pm, seven days a week. The total square footage of the restaurant is 2,200 square feet and the restaurant has approximately 20 employees working various shifts. Beer and wine will only be served during hours the restaurant is serving food. Velvet Restaurant, Inc. must secure a Use Permit that will allow them to obtain a Type 41 On Sale Beer and Wine with Eating Establishment license from the Alcohol Beverage Control Dept.

**General Plan Designation** NCC, Neighborhood Community Commercial  
**Zoning Designation.** C-S, Commercial Shopping Center  
**Property Size.** 24,293 square feet, restaurant is 2,200 square feet.

**Adjacent Zoning and Land Use:**

**North:** P-D, Planned Development. Use is commercial shopping center and Kettleman Lane.

**South:** P-D, Planned Development. Single Family Residential neighborhood.

**East:** P-D. Use is commercial shopping center. To the east across Ham Lane is the Beckman Ranch Shopping Center.

**West:** P-D. Uses include Single Family Residential neighborhoods and commercial shopping center.

**Neighborhood Characteristics:**

The restaurant site is in a small shopping center, located at the southwest corner of West Kettleman Lane and South Ham Lane. Single-family residential neighborhoods are located to the south of the restaurant. Commercial uses are located to the north, east and west. Kettleman Lane, which is located north of the project property, is a major thoroughfare that has a mixture of

commercial and office types of uses along this stretch of roadway. The other three corners of this intersection have some type of commercial or institutional use. The subdivisions to the south are separated from the shopping center by a block wall. This wall also runs the length of Ham lane south of the subject site. Within the shopping center, the Velvet Grill shares the building with two small retail businesses. There is also a freestanding auto parts store directly to the north of the restaurant.

#### **ENVIRONMENTAL ASSESSMENTS:**

The project was found to be Categorically exempt according to the California Environmental Quality Act, Article 19 §1532, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing ...the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant impacts are anticipated and no mitigation measures have been required.

#### **PUBLIC HEARING NOTICE:**

Legal Notice for the Use Permit was published on July 30, 2005. Twenty-six public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property.

#### **RECOMMENDATION:**

Review of Lodi Police Department event reports for calls for service at the Velvet Grill and Creamery Restaurant has determined that there have been relatively minor incidents related to noise from the restaurant staff. Staff recommends that the Planning Commission approve the request of Velvet Restaurant, Inc. for a Use Permit to allow a Type 41 Alcoholic Beverage License for On Sale Beer and Wine with eating establishment at 1421 South Ham Lane, subject to the conditions on the attached resolution.

#### **ALTERNATIVE PLANNING COMMISSION ACTIONS:**

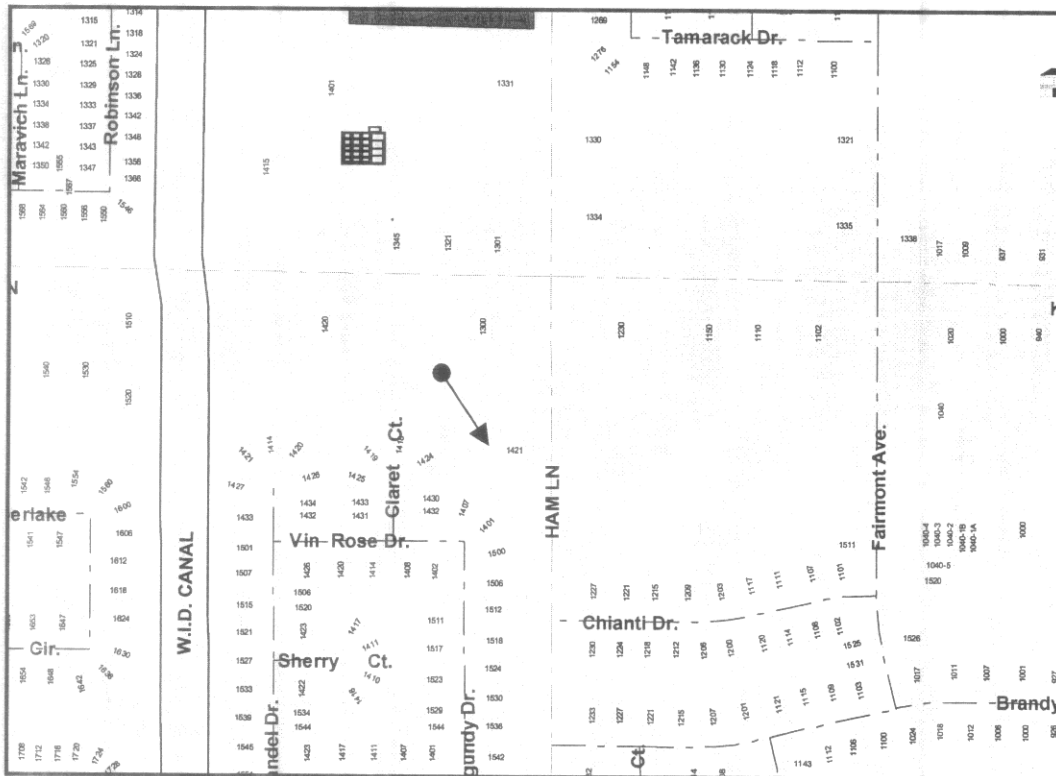
- Approve the Use Permit with Alternate Conditions
- Deny the Use Permit
- Continue the Request

#### **ATTACHMENTS:**

1. Vicinity Map
2. Sample Menu
3. Draft Resolution

# VICINITY MAP

Velvet Grill Restaurant  
1421 South Ham Lane  
Lodi, CA 95241



**DRAFT**

**RESOLUTION NO. P.C. 05-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI  
APPROVING THE REQUEST OF KIRK SMITH ON BEHALF OF THE VELVET  
GRILL AND CREAMERY RESTAURANT FOR A USE PERMIT TO ALLOW A TYPE  
41 ALCOHOLIC BEVERAGE LICENSE FOR ON SALE BEER AND WINE WITH A  
RESTAURANT AT 1421 S. HAM LANE, SUITE A.**

WHEREAS, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070.

WHEREAS, the project proponent is Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the property is zoned C-S, Commercial Shopping; and

WHEREAS, the property is located at 2745 West Kettleman Lane, Lodi, CA (APN 060-020-04) and is currently operating as a restaurant; and

WHEREAS, the requested use permit to allow the selling of beer and wine for on-site consumption within the restaurant is an enforcement action in accordance with the City of Lodi Zoning Ordinance; and

WHEREAS, Census Tract 43.06 in which the restaurant is located is currently operating with eight existing licenses of the eight allowable number of licenses allowing on premise consumption of alcoholic beverages; and

WHEREAS, the State Department of Alcoholic Beverage Control has training available that clearly communicates State law concerning the sale of alcoholic beverages; and

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi as follows.

1. The project is categorically exempt according to the California Environmental Quality Act, §15321, Class 21 (Enforcement Action by Regulatory Agency). The permit is being granted under adoption of an administrative decision or order enforcing the ABC license and enforcing Section 17.72.070 of the Zoning Ordinance and no significant impacts are anticipated and no mitigation measures have been required.
2. Use Permit Application No. U-05-011 is hereby approved, subject to the following conditions:
  - A. The applicant shall operate and abide under all conditions of the State of California Department of Alcoholic Beverage Control license Type 41.
  - B. The Type 41 license shall be limited to the on-site sale and consumption of beer and wine during the hours that the restaurant is open for dining and that no off-sale of alcohol.

- C. Prior to the issuance of a Type 41 license, the applicant shall complete Licensee Education on Alcohol and Drugs as provided by the State Department of Alcoholic Beverage Control.
  - D. The applicant shall insure that the serving of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.
- 3. The Planning Commission determines that public convenience or necessity would be served by the issuance of the Use Permit for a Type 41, On-sale Beer and Wine with eating establishment license.
  - 4. This conditional use permit shall be subject to periodic review for compliance with these conditions by the Planning Commission.
  - 5. No variance from any City of Lodi adopted code, policy or specification is granted or implied by the approval of this resolution.

Dated: August 10, 2005

I hereby certify that Resolution No. 05- was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on August 10, 2005 by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST: \_\_\_\_\_  
Secretary, Planning Commission

**LODI PLANNING COMMISSION  
REGULAR COMMISSION MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, SEPTEMBER 14, 2005**

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of September 14, 2005, was called to order by Chair Aguirre at 7:00 p.m.

Present: Planning Commissioners – Cummins, Haugan, Heinitz, Kuehne, White, and  
Chair Aguirre

Absent: Planning Commissioners – Moran

Also Present: Community Development Co-Manager Joseph Wood, Associate Planner Mark Meissner, Deputy City Attorney Janice Magdich, and Administrative Secretary Kari Chadwick

2. MINUTES

a) "August 10, 2005"

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Haugan, White second, approved the minutes as written.

3. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Aguirre called for the public hearing to consider the request of Carl Wishek on behalf of the Old Arch Brewing Company for a Use Permit to allow a Type 75 Alcoholic Beverage License-Brewpub for On Sale Beer, Wine, and Distilled Spirits with Eating Establishment at 115 S. School Street.

Mark Meissner reported the project site is located in the recently remodeled Woolworth building across from the Post Office. The applicant originally applied for a Type 23 ABC License back in August 2003 and is now requesting a Type 75 which would allow for distilled spirits as well as a Brew Pub. The Old Arch Brewing Company will be offering lunch & dinner. There is an over concentration of Liquor licenses in this Census Tract area. The license is a trade from one type to another but will still require an approval letter for ABC. Staff recommends approval of this Use Permit.

In response to Commissioner Heinitz, Mr. Meissner stated that this will not add another license to the Census Tract area it will only switch the type of license that was already approved from a Type 23 to a Type 75.

In response to Commissioner Haugan, Mr. Meissner stated that there doesn't need to be a reason why we feel the Use Permit is a Public Convenience. Janice Magdich, Deputy City Attorney, stated that we can include the language that states why we feel there is a Public Convenience. Mr. Haugan would like to see the reason why stated in the Resolution so that in the future it is clear to anyone reading it. Commissioner Heinitz supports Commissioner Haugan's statement for clarification.

In response to Commissioner Haugan, Mr. Meissner stated that the type 75 license can have off site sales. Commissioner Haugan would like to see this limited to on site sales only. He would also like to make sure that someone can't purchase a drink at the bar and walk out the door with it. Ms. Magdich stated that it is limited to on site sales and consumption of Beer, Wine and Distilled Spirits during the hours that the restaurant is open for dining and off sale of Beer and Wine. Mr. Haugan doesn't mind if they sell to vendors but does not want to see retail sales to the general public.



Vice Chair Kuehne stated that the Lodi beer Company has off site sales (retail) during business hours. Ms. Magdich stated that you can not drink alcoholic beverages in public. She also recommends revisiting the issue after the applicant has had a chance to speak.

Hearing Opened to the Public

- Carl Wishek, 23780 North Kennifick Rd., Acampo, came forward to answer questions.

In response to Commissioner Heinitz, Mr. Wishek stated that they were considering selling a special container called growlers that can be filled and bought so the customer can take Beer home with them. Commissioner Haugan wanted to clarify that the Beer was not going into bottles and being capped and sold.

Public Portion of Hearing Closed

Commissioner Haugan stated that if this is a specialty thing and the other establishment is doing it then he does not have a problem with it. He would not like to see a liquor store theme happen.

Commissioner Kuehne would like to have the word wine deleted from page two paragraph B.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Heinitz, White second, approved the request of Carl Wishek on behalf of the Old Arch Brewing Company for a Use Permit to allow a Type 75 Alcoholic Beverage License-Brewpub for On Sale Beer, Wine, and Distilled Spirits with Eating Establishment at 115 S. School Street subject to the attached amended resolution. The matter was approved by the following vote:

Ayes: Commissioners – Cummins, Haugan, Heinitz, Kuehne, White and Chair Aguirre  
Noes: Commissioners – None  
Abstain: Commissioners – None

- b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Haugan called for the continuation of the public hearing to consider The request of Kirk Smith on behalf of the Velvet Grill Restaurant for a Use Permit to allow a Type 41 Alcohol Beverage License for on sale beer and wine with eating establishment at 1421 South Ham Lane, Lodi

Mark Meissner reported that the Velvet Grill is located on Ham Lane just south of Kettleman Lane. This hearing is continued from the August 10<sup>th</sup> Commission meeting. Commission requested the police reports and found that most calls were not directly related to the restaurant itself. Three calls for noise late at night were related. One call was for general partying in the side parking lot, one for skateboarding, and one for pressure washing part of the building. There were no reports directly related to the employees drinking. The reports are for a five year period so there doesn't seem to be an on going problem. Staff finds that the Velvet Grill is a restaurant and because of that feel there will not be any alcohol related problems. Staff also finds that the restaurant is conditioned by ABC to have food receipts in excess of beer and wine receipts. It is also a condition in the resolution that repeated disturbances would result in revocation of this Use Permit. Staff recommends approval of the request subject to the attached resolution.

Mr. Meissner stated that he called to make sure someone would be at the meeting to represent the applicant.

Hearing Opened to the Public

- Wesley Wemet, 412 N. California Street, assistant manager for the restaurant.

In response to Commissioner Heinitz, Mr. Wemet stated that he has not had any dialogue with the complainant but he is aware of the problems and concerns. He stated that the applicant gave him a piece of paper with answers to the questions on it. Mr. Wemet read the statement that the applicant gave to him and they are as follows:

1. We are only open until 10:00 pm at the latest.
2. We have been serving beer and wine at the other three locations for over twelve years with no violations or incidents relating to the sale of such.
3. We have operated this restaurant since June of 2004 and have developed a crew over the passed year to be able to serve beer and wine in an appropriate manner.
4. We will offer beer or wine to those customers that wish to have it with very little attempt to sell these beverages via marketing or other means.
5. Employees are not allowed to drink these beverages with strict inventory controls to help assure this.
6. In regards to a neighbor, Mr. John Miller's issue, all issues were either not related to this establishment or have been addressed as so to minimize future concerns.

In response to Chair Aguirre, Mr. Wemet stated that Mr. Smith is at the location in Alameda.

Commissioner Haugan stated that one of his concerns was that the owner felt that it wasn't necessary for him to be here. He feels that this issue is being taken as less than important. Mr. Haugan doesn't have a problem with the serving of the beverages being requested but there is a problem with the owner by his lack of presence. He also said he had no problem with the request.

Commissioner Heinitz stated that the cavalier attitude of the establishment, the fact that the owner doesn't find the importance of being here and a preprinted answer sheet was sent with Mr. Wemet, leads to the assumption that the cavalier attitude will carry over into the serving of the beer and wine and he doesn't see it having the control that is needed. He did not want to vote in favor of this the last time and will not support it at this time.

In response to Commissioner Cummins, Mr. Wemet stated the Kirk Smith is the president of the company and Chris Gianulias owns the building. Bill Owens, who lives in Santa Barbara, owns the franchise.

Jonathan Miller, 1424 Claret Ct., stated that the fact that the owner isn't present is indicative of the response he has gotten in the past. He also wanted to make it clear that not all the calls that he made were to the police he did call the owner directly. He has no problem with the serving of the beer and wine but he questions the maturity level of the staff.

#### Public Portion of Hearing Closed

Commissioner Heinitz is disappointed that the applicant didn't show up and feels it's just going to be a loose run operation and can not support it.

Commissioner White stated that the Use Permit goes with the property not with the owner. He would like to hear in the staff report why the owner believes that there is a public necessity or convenience. He is not in favor at this time.

In response to Commissioner Haugan, Mr. Meissner stated that the application was made by the Velvet Restaurants Inc. but Chris Gianulias brought the application in.

Commissioner Haugan felt that the franchise owner should show a little more interest. He is not in favor of this.

Commissioner Heinitz requested clarification from council regarding the names having to be the same on all the licenses and Use Permits. Janice Magdich, Deputy City Attorney, stated that the names should all be the same. In the past there has not been a history of making them both

comply because the applicant will in some instances apply for the Use Permit and then at a later date apply for the ABC License.

Commissioner Heinitz feels that the person whom is obtaining the Use Permit is an important factor.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Cummins, Heinitz second, rejected the request of Kirk Smith on behalf of the Velvet Grill Restaurant for a Use Permit to allow a Type 41 Alcohol Beverage License for on sale beer and wine with eating establishment at 1421 South Ham Lane, Lodi. The matter was approved by the following vote:

Ayes: Commissioners – Cummins, Haugan, Heinitz, Kuehne, White, and Chair Aguirre  
Noes: Commissioners – None  
Abstain: Commissioners – None

Chair Aguirre notified the representative of the applicant's right to appeal.

4. PLANNING MATTERS  
None

5. ANNOUNCEMENTS AND CORRESPONDENCE  
None

6. ACTIONS OF THE CITY COUNCIL  
None

7. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE  
None

8. UPDATE ON COMMUNITY SEPARATOR/GREENBELT TASK FORCE  
None

9. COMMENTS BY THE PUBLIC  
None

10. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:45 p.m.

ATTEST:

Kari Chadwick  
Administrative Secretary

CITY COUNCIL

JOHN BECKMAN, Mayor  
SUSAN HITCHCOCK,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
JOANNE L. MOUNCE

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6711  
FAX (209) 333-6842  
[rhatch@lodi.gov](mailto:rhatch@lodi.gov)

BLAIR KING

City Manager  
SUSAN J. BLACKSTON  
City Clerk  
D. STEPHEN SCHWABAUER  
City Attorney

October 14, 2005

Mr. Kirk Smith  
c/o Velvet Restaurants, Inc.  
698 Sugarwood Court  
Galt, CA 95355

SUBJECT: USE PERMIT APPLICATION: U-05-011  
VELVET GRILL RESTAURANT, TYPE 41 LIQ. LIC.  
1421 SOUTH HAM LANE, LODI.

Mr. Smith:

At its meeting of Wednesday, October 12, 2005, the Lodi City Planning Commission confirmed their denial of your request for a Use Permit to establish a Type 41, On-Sale Beer and Wine liquor license for the Velvet Grill Restaurant located at 1421 South Ham Lane, Lodi. The Planning Commission's denial is based on the findings set forth in the revised Resolution No. PC 05-29. This revised resolution supersedes the previous resolution sent to you in the letter dated September 15<sup>th</sup>. Please disregard that resolution, as it is no longer valid.

For your information, your appeal to the City Council is planned to be heard at their public hearing of November 16, 2005. You will receive official notice of this meeting in the near future. If you have any questions, please contact me at one the options listed above.

Sincerely,



Randy Hatch  
Community Development Director

enclosure: Res. 05-29

cc: Alcoholic Beverage Control  
Velvet Restaurants Inc.  
Chris Gianulias

**RESOLUTION NO. P.C. 05-29**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI DENYING  
THE REQUEST OF KIRK SMITH ON BEHALF OF THE VELVET GRILL AND  
CREAMERY RESTAURANT FOR A USE PERMIT TO ALLOW A TYPE 41 ALCOHOLIC  
BEVERAGE LICENSE FOR ON SALE BEER AND WINE WITH A RESTAURANT AT  
1421 S. HAM LANE, SUITE A.**

WHEREAS, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing on September 28, 2005, as required by law, on the requested Use Permit, in accordance with the Lodi Municipal Code, Section 17.72.070; and

WHEREAS, the project proponent is Kirk Smith on behalf of the Velvet Grill and Creamery Restaurant; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the property is zoned PD, Planned Development for Commercial Shopping; and

WHEREAS, the property is located at 1421 South Ham Lane, Lodi, CA (APN 060-020-04) and is currently operating as a restaurant; and

WHEREAS, Census Tract 43.06 in which the restaurant is located is currently operating with eight existing on sale licenses with eight allowable; and

WHEREAS, the requested liquor license would be the 9<sup>th</sup> on sale liquor license creating an over concentration for the Census Tract; and

WHEREAS, the Planning Commission's review of liquor licenses must take into consideration the General Plan's Land Use and Growth Management Element Goal E, Policy 7 "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality development," and Health and Safety Element Goal D, "To prevent crime and promote the personal security of Lodi residents;" and

WHEREAS, the Planning Commission requires review and approval of a use permit for all new liquor licenses within the City of Lodi to allow a public forum for discussion and deliberation to insure new commercial projects achieve and maintain a high quality of development, and prevent potential impacts that could be detrimental to the public's welfare.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi as follows.

1. The Applicant failed to provide the information necessary for the Planning Commission to determine whether the project would achieve and maintain a high quality of development, and whether the public's welfare would be served by approving the requested Use Permit to this applicant. Therefore, Use Permit Application No. U-05-011 is hereby denied.

Dated: October 12, 2005

I hereby certify that Resolution No. 05-29 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on October 12, 2005 by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST:

  
Secretary, Planning Commission

PROOF OF PUBLICATION

(2015.5 C.C.C.P.)

STATE OF CALIFORNIA

County of San Joaquin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Lodi News-Sentinel, a newspaper of general circulation, printed and published daily except Sundays and holidays, in the City of Lodi, California, County of San Joaquin and which newspaper had been adjudicated a newspaper of general circulation by the Superior Court, Department 3, of the County of San Joaquin, State of California, under the date of May 26th, 1953. Case Number 65990; that the notice of which the annexed is a printed copy (set in type not smaller than non-pareil) has been published in each regular and entire issue of said newspaper and not in any supplement thereto on the following dates to-wit:

November 5th

all in the year 2005.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Lodi, California, this 5th day of November, 2005

Signature

This space is for the County Clerk's Filing Stamp

Proof of Publication of  
Special Notice of Public Hearing for November 16, 2005,  
Consider an appeal of the Planning Commission decision to deny the request of Kirk Smith on behalf of Velet Grill for a use permit (U-05-011) to all a Type 41 Alcoholic Bevera License for on sale beer and wine with a restaurant at 1421 S. Ham Lane, Suite A

**NOTICE OF PUBLIC HEARING**  
NOTICE IS HEREBY GIVEN that on Wednesday, November 16, 2005 at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) to consider an appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the close of the hearing scheduled herein; and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:  
Susan J. Blackston  
City Clerk

Dated: November 2, 2005.

Approved as to form:

D. Stephen Schwabauer  
City Attorney  
November 5, 2005 - 08502293

8502393



## **DECLARATION OF MAILING**

**PUBLIC HEARING FOR NOVEMBER 16, 2005, CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY THE REQUEST OF KIRK SMITH ON BEHALF OF VELVET GRILL FOR A USE PERMIT (U-05-011) TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE LICENSE FOR ON SALE BEER AND WINE WITH A RESTAURANT AT 1421 SOUTH HAM LANE, SUITE A.**

On November 3, 2005, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Consider an Appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a use permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2005, at Lodi, California.

ORDERED BY:

**SUSAN BLACKSTON  
CITY CLERK, CITY OF LODI**

ORDERED BY:

\_\_\_\_\_  
JENNIFER M. PERRIN, CMC  
DEPUTY CITY CLERK

\_\_\_\_\_  
JACQUELINE L. TAYLOR, CMC  
DEPUTY CITY CLERK

  
\_\_\_\_\_  
DANA R. CHAPMAN  
ADMINISTRATIVE CLERK

U-05-011 – Velvet Grill

APN; OWNER; ADDRESS; CITY; STATE; ZIP; SITUSNUM; SITUSDIR; SITUSSTNAME; SITUSTYP  
E

06002003; MIYAHARA, KAZUO & HATSUMI TR ; PO BOX 2198 ; MEMPHIS  
; TN; 38101; 1300; W ; KETTLEMAN ; LN

06003074; DAVIDSON, JERROLD P & KIMBER I; 497 N 71ST ; SPRINGFIELD  
; OR; 97478; 1511; S ; BURGUNDY ; DR

06002004; GIANULIAS, CHRIS & PAULINE; 3220 PROVINCE TOWNE  
CT; MODESTO; CA; 95355; 1421; S; HAM; LN

06003011; PHARR, MARGARET ELINOR TR; 1925 NORFOLK  
DR; LODI; CA; 95242; 1512; S; BURGUNDY; DR

06003012; ALBERT, MARK J & KIM L; 1506 BURGUNDY  
DR; LODI; CA; 95242; 1506; S; BURGUNDY; DR

06003013; JENSON, SUSAN J; 1500 BURGUNDY  
DR; LODI; CA; 95242; 1500; S; BURGUNDY; DR

06003014; GAUNA, CESAREO & AURORA A; 1401 VIN ROSE  
DR; LODI; CA; 95242; 1401; W; VIN ROSE; DR

06003015; PARDELLA, JOHN F & CAROLE M TR; 2013 TYLER  
WAY; LODI; CA; 95242; 1407; W; VIN ROSE; DR

06003016; SOROUR, NAGUI & LAILA; 1343 RIVERGATE  
DR; LODI; CA; 95240; 1430; S; CLARET; CT

06003017; MILLER, JONATHAN & JEAN MARIE; 1424 CLARET  
CT; LODI; CA; 95242; 1424; S; CLARET; CT

06003018; MORRIS, DAVID P & RAE JEAN; 1418 CLARET  
CT; LODI; CA; 95242; 1418; S; CLARET; CT

06003019; KENNEDY, KERRIE E; 1419 CLARET  
CT; LODI; CA; 95242; 1419; S; CLARET; CT

06003020; SHAH, FIAZ & SHAHNAZ; 1953 VICTORIA  
DR; LODI; CA; 95242; 1425; S; CLARET; CT

06003021; BADER, LADON G & KATHIE M TR; 1124 W TOKAY  
ST; LODI; CA; 95240; 1431; S; CLARET; CT

06003022; PLACENCIA, CONSUELO TR; 2621 APPIAN  
WAY; PINOLE; CA; 94564; 1432; ; ZINFANDEL; DR

06003023; SINGH, MANJIT & JASWINDER KAUR; 2072 PROVIDENCE  
WAY; LODI; CA; 95242; 1426; S; ZINFANDEL; DR

06003024; HIETBRINK, GARY A & NANCY A; 1420 ZINFANDEL  
DR; LODI; CA; 95242; 1420; S; ZINFANDEL; DR



U-05-011 – Velvet Grill

06003070;SHAH, ZAKIR H;1420 VIN ROSE DR;LODI;CA;95242;1420;W;VIN  
ROSE;DR

06003071;SIDHU, INDERJIT S & PARDEEP;1414 VIN ROSE  
DR;LODI;CA;95242;1414;W;VIN ROSE;DR

06003072;FILOMEO, DONALD & ELFONDA L;1408 VIN ROSE  
DR;LODI;CA;95242;1408;W;VIN ROSE;DR

06003073;PRIDMORE, ALOHA R TRUSTEE;1110 W PINE  
ST;LODI;CA;95240;1402;W;VIN ROSE;DR

06004001;CUPERTINO NATIONAL BANK;400 EMERSON ST;PALO  
ALTO;CA;94301;1230;W;KETTLEMAN;LN

06005101;HUTMACHER, DOUGLAS D & KERRY J;1227 W CHIANTI  
DR;LODI;CA;95240;1227;W;CHIANTI;DR

06005102;BIANCHI, ROCKY & LINDA;1221 W CHIANTI  
DR;LODI;CA;95240;1221;W;CHIANTI;DR

06005103;KLUDT, RICHARD A & PAMELA G;1215 CHIANTI  
DR;LODI;CA;95240;1215;W;CHIANTI;DR

Smith, Kirk, Velvet Grill  
1420 S. HAM LN. STE A

CITY COUNCIL

JOHN BECKMAN, Mayor  
SUSAN HITCHCOCK,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
JOANNE MOUNCE

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702  
FAX (209) 333-6807  
cityclrk@lodi.gov

BLAIR KING, City Manager  
SUSAN J. BLACKSTON  
City Clerk  
D. STEPHEN SCHWABAUER  
City Attorney

November 3, 2005

MAILED CERTIFIED MAIL  
AND REGULAR U.S. POSTAL DELIVERY

Kirk Smith  
Velvet Grill  
1421 S. Ham Lane  
Lodi, CA 95242

## NOTICE OF CITY COUNCIL PUBLIC HEARING – November 16, 2005

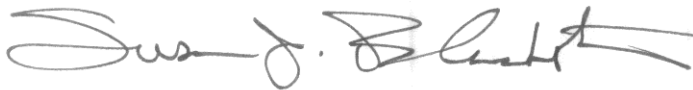
This letter is to notify you that a public hearing will be held by the City Council on **Wednesday, November 16, 2005, at 7:00 p.m.**, or as soon thereafter as the matter can be heard, at the Carnegie Forum, 305 W. Pine Street, Lodi.

This hearing is being held to consider your appeal of the Planning Commission decision on September 14, 2005 to deny Use Permit U-05-011 to allow a Type 41 Alcoholic Beverage Control License for on sale beer and wine with a restaurant at 1421 S. Ham Lane, Suite A.

If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.  
*Note: Written correspondence for the City Council may be mailed in c/o the City Clerk's Office, P.O. Box 3006, Lodi, CA 95241-1910, or delivered to the City Clerk at 221 West Pine Street, Lodi, California.*

Should you have any questions, please contact my office or the Community Development Department at (209) 333-6711.

Sincerely,



Susan J. Blackston  
City Clerk

cc: Community Development Department



## **DECLARATION OF POSTING**

**PUBLIC HEARING FOR NOVEMBER 16, 2005, CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY THE REQUEST OF KIRK SMITH ON BEHALF OF VELVET GRILL FOR A USE PERMIT (U-05-011) TO ALLOW A TYPE 41 ALCOHOLIC BEVERAGE LICENSE FOR ON SALE BEER AND WINE WITH A RESTAURANT AT 1421 SOUTH HAM LANE, SUITE A.**

On Thursday, November 3, 2005, in the City of Lodi, San Joaquin County, California, a notice of public hearing to Consider an Appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a use permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A

Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2005, at Lodi, California.

ORDERED BY:

**SUSAN J. BLACKSTON**  
**CITY CLERK**

\_\_\_\_\_  
JENNIFER M. PERRIN, CMC  
DEPUTY CITY CLERK

\_\_\_\_\_  
JACQUELINE L. TAYLOR, CMC  
DEPUTY CITY CLERK

A handwritten signature in dark ink, appearing to read "Dana R. Chapman", is written over a horizontal line.

DANA R. CHAPMAN  
ADMINISTRATIVE CLERK



**CITY OF LODI**  
**Carnegie Forum**  
**305 West Pine Street, Lodi**

**NOTICE OF PUBLIC HEARING**

**Date: November 16, 2005**

**Time: 7:00 p.m.**

*For information regarding this notice please contact:*

**Susan J. Blackston**  
**City Clerk**  
**Telephone: (209) 333-6702**

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that on **Wednesday, November 16, 2005** at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) to consider an appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage License for on sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the close of the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

A handwritten signature in black ink, appearing to read "Susan J. Blackston".

Susan J. Blackston  
City Clerk

**Dated: November 2, 2005.**

Approved as to form:

A handwritten signature in black ink, appearing to read "D. Stephen Schwabauer".

D. Stephen Schwabauer  
City Attorney

Filed 11-16-05  
Kirk Smith  
Item I-1

Nov 16, 2005 re (U-05-011)

To Lodi City Council,

I wish to put in writing some of the timeline/facts, as I know them. We have applied for and been granted beer/wine licenses in 3 other locations, which we operate. The application process in Lodi is far different than we have experienced before. Specifically, we did not realize we needed to attend any public hearing in this process. We paid the \$1000 fee in late June, when I submitted the application. At that time I was not informed of any need to attend any hearings. All that was said was "we will try to push this through as quickly as possible". It was never my intent to appear disinterested in your process, I was simply not as well versed, as I should have been. Because of this, nobody from our restaurant was in attendance to represent us properly.

We take this very seriously, feel the granting of this license is necessary to keep up with other restaurants in the city that have this right. The written reason for denying our license has us puzzled. It is stated that there are already 8 such type permits in our zone, of which we would be #9. We were then informed this area is only zoned for 8. My confusion is why were we allowed to write a check for a permit of which we could not meet the criteria necessary in the first place.

Additionally, on Sept 14, I received a letter from the CDD stating their recommendation to approve this request. Again, not having any clue this would not be approved, I was confused about the decision that very night to deny the permit. At that meeting on Sept 14<sup>th</sup>, our manager in attendance was told they denied it because we were not taking this seriously enough, although this was not the written reason for denial.

This brings us to tonight, where I hope satisfy any concerns.

Kirk Smith  
President, Velvet Grill and Creamery.



RESOLUTION NO. 2005-246

A RESOLUTION OF THE LODI CITY COUNCIL OVERRULING  
THE PLANNING COMMISSION'S DECISION AND APPROVING  
THE REQUEST OF KIRK SMITH ON BEHALF OF THE VELVET  
GRILL FOR A USE PERMIT TO ALLOW A TYPE 41  
ALCOHOLIC BEVERAGE CONTROL LICENSE FOR ON-SALE  
BEER AND WINE WITH A RESTAURANT AT 1421 SOUTH HAM  
LANE, SUITE A, SUBJECT TO THE CONDITIONS AS  
RECOMMENDED BY THE PLANNING COMMISSION

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WHEREAS, notice thereof having been published according to law, an affidavit of which is on file in the office of the City Clerk, a public hearing was held November 16, 2005, by the Lodi City Council to consider the appeal of Kirk Smith on behalf of the Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage Control license for on-sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council determines that public convenience or necessity would be served by the issuance of Use Permit (U-05-011) and does hereby overrule the Planning Commission's decision and does approve the request of Kirk Smith on behalf of the Velvet Grill for a Use Permit to allow a Type 41 Alcoholic Beverage Control license for on-sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A, subject to the following conditions as recommended by the Planning Commission:

- A. The applicant shall operate and abide under all conditions of the State of California Department of Alcoholic Beverage Control license Type 41.
- B. The Type 41 license shall be limited to the on-site sale and consumption of beer and wine during the hours that the restaurant is open for dining and that no off-sale of alcohol be allowed.
- C. Prior to the issuance of a Type 41 license, the applicant shall complete Licensee Education on Alcohol and Drugs as provided by the State Department of Alcoholic Beverage Control.
- D. The applicant shall ensure that the serving of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace, or safety of persons residing or working in the surrounding area. This includes, but is not limited to, disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.

BE IT FURTHER RESOLVED that this conditional use permit shall be subject to periodic review for compliance with these conditions by the Planning Commission.

BE IT FURTHER RESOLVED that no variance from any City of Lodi adopted code, policy, or specification is granted or implied by the approval of this resolution.

Dated: November 16, 2005

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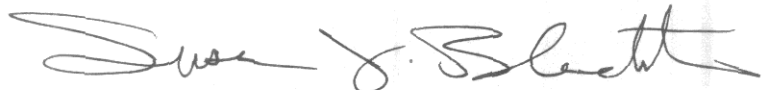
I hereby certify that Resolution No. 2005-246 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, and Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Mayor Beckman

A handwritten signature in black ink, appearing to read "Susan J. Blackston", with a stylized flourish at the end.

SUSAN J. BLACKSTON  
City Clerk

CITY COUNCIL

JOHN BECKMAN, Mayor  
SUSAN HITCHCOCK,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
JOANNE MOUNCE

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006  
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cityclrk@lodi.gov

BLAIR KING, City Manager

SUSAN J. BLACKSTON  
City Clerk

D. STEPHEN SCHWABAUER  
City Attorney

November 17, 2005

Kirk Smith  
Velvet Grill  
1421 S. Ham Lane  
Lodi, CA 95242

**RE: Resolution Overruling the Planning Commission's Decision and Approving the Request of Velvet Grill for a Use Permit to Allow a Type 41 Alcoholic Beverage Control License for On-Sale Beer and Wine with a Restaurant**

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The Lodi City Council, at its meeting of November 16, 2005, adopted the enclosed resolution overruling the Planning Commission's decision and approving your request on behalf of the Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage Control license for on-sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A, subject to the conditions as recommended by the Planning Commission and outlined in the enclosed resolution.

Should you require further information or have any questions, please feel free to contact my office, or Community Development at (209) 333-6711.

Sincerely,



Susan J. Blackston  
City Clerk

SJB/JMP

Enclosure

cc: Community Development (w/o enc.)